IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2628 of 2003

with

CRIMINAL MISC.APPLICATION No 2629 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI RAM DEVELOPERS , THO' ITS ADMINISTRATOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2628 of 2003
   MR PJ KANABAR for Petitioner No. 1
   Mr.S.S.Patel, A.P.P. for Respondent No. 1
   MR HARSHIT S TOLIA for Respondent No. 2
2. Criminal Misc.Application No. 2629 of 2003
   MR YOGESH S LAKHANI for Petitioner No. 1
   Mr.S.S.Patel,A.P.P. for Respondent No. 1
   MR.HARSHIT S TOLIA for Respondent no.2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/08/2003

JUDGEMENT

These two petitions have been filed by two different sets of parties contesting a civil litigation before the learned concerned Joint Civil Judge, Senior Division, at Amreli, in Special Civil Suit no.55 of 1991. It seems that in the aforesaid Civil Suit, defendant no.8 Amarsshi Virjibhai Dhanani submitted an application at Exh.313 at page 46 at Annexure "D" to the petition stating that the plaintiff and defendants nos.1/1 to 1/4 have forged a power of attorney, and therefore, they may be dealt with in accordance with law.

2. The said application was supported by affidavits in the said Civil Suit.

3. On receiving the said application, it was fixed for hearing and reply. Accordingly, original plaintiff submitted written objections at Exh.315 whereas the legal representatives of defendant no.1. i.e. defendants nos.1/1 to 1/4 did not submit written objections or counter affidavit opposing the said application of original defendant no.8-Amarshi Virjibhai Dhanani.

4. During the course of arguments, it was added that certain other documents were also there in respect of which the offence of forgery was committed.

5. The learned Judge in charge of the said proceedings, heard the parties and came to the conclusion that there was a prima facie case against those persons, and therefore, the said application was allowed, and the learned trial Judge directed that a complaint be filed against the plaintiffs and defendants nos.1/1 to 1/4 for offences punishable under Sections 464, 465, 467, 471 and other offences under the Indian Penal Code ("IPC" for short) read with Secs. 34 and 120B of the IPC read with Sec.511 of the IPC before the Chief Judicial Magistrate at Amreli.

6. Feeling aggrieved by the said order of the learned Civil Judge dated 9-4-2003, the petitioners have preferred these petitions before this Court with a prayer to quash the said order of the learned Judge. On receiving the applications, notices were issued and in response to the service of notices, learned A.P.P. has appeared for the State whereas Mr. N.D. Nanavaty,

learned Senior Advocate has appeared on behalf of original defendant no.8 who has supported the order impugned in these two petitions. I have, therefore, heard, the learned Advocates for the parties and the learned A.P.P. and they have taken me through the relevant records of the aforesaid matter, copies whereof have been produced on record of these two petitions alongwith affidavits of the concerned parties.

7. Mr. P.J. Kanabar, learned Advocate appearing for the petitioner in Misc. Criminal Application no.2628/2003, has argued the matter extensively, mainly attacking the order impugned in these petition on the ground that the trial Court did not apply its mind to the facts and circumstances, and that the provisions made in Secs. 195, 197 and340 were not properly considered and the trial Court should not have passed the order in question without entering into enquiry, and that the order should not have been passed at the stage when the original suit is pending at the stage of recording of evidence.

8. Mr. Y.S.Lakhani arguing the matter on behalf of the petitioners in Misc.Criminal Application no.2629/2003 has supported the argument of Mr. Kanabar and has further argued that his clients were not involved in the offences and they were not concerned, connected, related or interested in the outcome of the alleged offences, and therefore, no offence is made out against his clients, and that the complaint may be quashed qua his client.

9. Mr. P.J. Kanabar, learned Advocate appearing on behalf of the petitioners in the first petition i.e. Misc.Criminal Application no.2628/2003 has, however, argued that the provisions contained in Section 195 of the Code of Criminal Procedure, 1973 (for short "the Code") have not been followed, and therefore, the order impugned in this petition is required to be quashed and set aside.

10. Now, if we consider the provisions made in Section 195 of the Code, it would be worthwhile to refer to the said provisions made in Section 195 of the said Code hereinbelow for ready reference:

"195. Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence._ (1) No Court shall take cognizance-

(a) (i) of any offence punishable under

Sections 172 to 188(both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code(45 of 1860), namely, Section 193 to 196 (both inclusive), 199,200, 205 to 211 (both inclusive) and 228, when such an office is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint;

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been

concluded'

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that_

(a) where appeals like to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

11. Section 340(1) of the said code reads as follows;

"340.Procedure in cases mentioned in Section 195-(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first

class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

12. On reading the said provisions, an argument has been advanced to the effect that under the aforesaid provisions, a complaint is required to be filed by the Court and the filing of complaint could not have been entrusted to the officer of the Court.

13. On going through the impugned order, it is very clear that the learned trial Judge has directed that the Registrar of the Court should file a complaint before the said Court.

14. On going through the provisions made in Section 340(3) of the said Code, it is very clear that the complaint was required to be filed by the Court itself and the said work could not be entrusted to the officer of the Court. Subsection (3) of Section 340 makes it clear that the complaint is required to be filed by the Court. It does not say that the complaint could be filed by the officer of the Court, under the order of the Court.

15. This point was not seriously disputed even by the respondent, and therefore, without going into detailed discussion on the subject it has to be accepted that the complaint ought to have been filed by the Court concerned and not by the officer of the Court. To that extent, the order cannot be treated to be legal, and therefore, it is required to be modified accordingly.

16. Then, it has been argued by Mr. Kanabar for the petitioners that the Civil Suit is pending, and the order impugned in this petition has been passed during the pendency of the suit and the trial has yet not commenced. It has also been argued that now affidavits are permitted in lieu of oral evidence, and therefore, the trial will commence very soon and the parties will be at liberty to file affidavits and opposite parties may cross-examine the witnesses on the strength of the affidavits, and therefore, the trial will be over very soon. Now, Section 195 and 340 of the said Code have been referred hereinabove and it nowhere says that an order for filing

complaint can be passed by the Court concerned only at the stage of conclusion of trial, and that no such order can be passed during the pendency of a suit.

17. It appears that there are some decisions saying that it would be desirable to pass such orders at the close of the trial, nevertheless, it has nowhere been laid down that it would be obligatory on the part of the trial Court to wait till the end of the trial for passing an order like the one impugned in the present petition. Therefore, simply because the suit is pending, it would be no ground for allowing the petition and quashing the impugned order.

18. It has then been argued by Mr. Kanabar that according to the allegations made at page 51, only the power of attorney submitted at mark 233/1 in the aforesaid Civil Suit on 23rd April, 2000, is allelged to have been forged. Now, if we go through the order as a whole, it becomes clear that during the course of arguments, allegations have been made with respect to other documents referred in the order.

19. It is required to be considered that while passing the said order, the learned Judge had with him the affidavits of concerned parties. This can be gathered from the order of the trial Court. In paragraph 2 of the said order at page 54, the learned trial Judge has clearly observed that in support of the application at Exh.313 filed by original defendant no.8, Manubhai Nanjibhai Antani and Shantaben Virjibhai have submitted their affidavits at Exh.318 and 319. This shows that the contentions of defendant no.8 in the application Exh.313 with respect to power of attorney mark 233/1 have been supported by affidavits Exhs.318 and 319 before the trial Court.

20. Paragraph 3 of the said order at page 54 further shows that the original plaintiff Jaisukhbhai Bhagwanjibhai had filed written objections at Exh.315. This shows that the plaintiff had submitted his objections but the objections were not supported by his affidavit.

21. Paragraph 4 of the said order at page 54 also shows that the legal representative of defendant no.1 i.e. defendants 1/1 to 1/4 did not submit written objections or affidavits in reply to the affidavit of the said two persons.

22. The above facts make it clear that the

contentions raised in application Exh.313 by defendant no.8 in Special Civil Suit no.55/91 with respect to the forgery of power of attorney mark 233/1 have been supported by affidavits of Manubhai Nanjibhai Antani and Shantaben at Exhs.318 and 319. It has also been borne out from the impugned order that these averments have not been controverted by way of counter-affidavit either by plaintiff Jaisukhbhai or by defendants 1/1 to 1/4. On one hand the plaintiff did not submit affidavit in support of his written objection Exh.315 and on the other hand defendants 1/1 to 1/4 did not submit their objections in writing or affidavits. This clearly means that the averments made on oath by Manubhai and Shantaben in Exhs.318 and 319 before the trial Court in support of the impugned application Exh.313 with respect to the forgery of power of attorney mark 233/1 submitted by defendant no.8 have remained uncontroverted on record before the trial Court. It is well settled that when a matter is being disposed of on affidavits and if there is affidavit of one party, and if the allegations and averments of the affidavits have not been controverted by counter affidavit by the opposite parties, then, in that event, the averements and allegations in the affidavit not controverted by affidavit by the opposite side may be accepted to be true.

23. Therefore, prima facie, the trial Court was justified in accepting the truthfulness of the averments and allegations made in the affidavits Exhs.318 and 319 in support of impugned application Exh.313 in the said Special Civil Suit with regard to the alleged forgery of power of attorney mark 233/1.

24. The learned advocate for the petitioner has drawn my attention to his argument before the trial Court referred to in paragraph 16 at page 62. It seems that Mr. Kanabar had argued before the trial Court that order under Section 195 can be passed only by a Court and a party has no right to file application for such an order under Section 195 of the said Code. The provisions contained in Section 195 have been reproduced hereinabove. On a bare look at the said provision, it is not possible to hold that the Court has to act only suo moto and it cannot act on an application of a party. Therefore, this contention cannot be accepted.

25. Arguments were advanced at length by Mr. Kanabar regarding the grounds enumerated in impugned order of the trial Court for coming to a decision for filing complaint which can be gathered at page 65 onwards. It may be stated here that this Court cannot go into the

sufficiency of materials before the trial Court for arriving at a decision to file a complaint, as has been done by the trial Court. The above reasons go to show that the trial Court has assigned reasons for coming to a decision of filing complaint. Therefore, it cannot be said that the trial Court has not assigned reasons for allowing the above application and for coming to a decision for filing complaint against the original plaintiff and defendants 1/1 to 1/4.

26. At page 69, the trial Court has observed that it cannot be presumed that the documents and affidavits are false. At the same time, the trial Court has also given reasons for coming to a decision for filing a complaint. Now, simply because the trial Court has observed that it is not possible to presume something in favour of defendant no.8, it cannot be said that the trial Court has committed an error in the eye of law, in coming to a decision for filing complaint against the persons named in the said order.

27. The trial Court was required to come to a prima facie decision and it was not necessary for it to finally conclude this way or that way.

28. Even at page 69 and onwards, the trial Court has given reasons as to why it was coming to a decision of filing a complaint.

29. It has also been argued by Mr. Kanabar that a wrong order has been passed against the plaintiff for filing complaint after a long time. The trial Court has considered the averments made in the application supported by affidavits. The trial Court has also considered the objections filed on record. The trial Court has further considered the arguments advanced by the learned Advocates for the contesting parties. Therefore, it cannot be said, at this stage, that the order is wrong or illegal. Again, with respect to the delay in submitting the application, the said issue can be dealt with and decided as and when the trial proceeds ahead. Mere delay in filing of a complaint would not be a justification for quashing the order.

30. It has also been argued by Mr. Kanabar that deceased Vaghjibhai had not made any allegations with respect to documents in question. This would not debar defendant no.8 from placing his case before the trial Court. It is more so, when the case has been supported by affidavits of two persons referred to hereinabove. It is more so when the plaintiff and defendants 1/1 to 1/4

have not submitted their affidavits in order to oppose the application of defendant no.8 at Exh.313 before the trial Court.

31. With respect to paragraph 4 at page 72, Mr. Kanabar has argued that the plaintiff had no knowledge about the contents of paragraph 4. This would again be a subject matter of dispute which can be considered by an appropriate Court.

32. The trial Court has observed in paragraph 20 at page 77 that signatures on different documents and pleadings are different from one another and there is some change therein. This is an observation made by the trial Court on looking at the documents produced before it. This would again be subject matter of consideration before the trial Court as and when the trial proceeds on the strength of the impugned order.

33. It has also been argued that the present petitioner being the plaintiff in the aforesaid Civil Suit has been wrongly involved in the matter. This would also be subject matter of decision at the trial. The trial Court has found that there is a prima facie case against the present petitioner, and therefore, the plaintiff -petitioner will have to wait till the trial is over. This Court will not be able to decide as to whether the plaintiff has been wrongly involved because the factual aspects are not required to be dealt with and decided by this Court, since this Court is dealing with the matter only on the strength of the impugned order passed by the trial Court which is based on appreciation of material produced before the Court concerned. Factual aspects cannot be gone into by this Court in this petition.

34. On referring to page 80 to 81, learned Advocate for the petitioner has drawn my attention to the observations made in paragraph 24 and 25 of the order impugned in this petition. It relates to the observations made by the Orissa High Court to the effect that there should be a prima facie material before the Court to indicate that the offences complained of are likely to have been committed. The trial Court has given reasons for filing the complaint after holding that a prima facie case has been made out. Therefore, it can be said that the principle of this decision has been complied with, in substance.

35. In paragraph 25 at page 81 a decision of the Honourable Supreme Court reported in AIR 1981 SC 174 was

referred to by the trial Court. There, the matter was of delay. In the present case, we find that the suit is still pending and it is not borne out that there was any delay in filing the application for prosecuting the persons concerned. The question of delay is again a question of fact which can be agitated at the trial Court at the stage of trial and the trial Court will be at liberty to consider the question of delay. Order for filing complaint cannot be quashed on the ground of delay at this stage. It may be open to these petitioners to plead before the Trial Court that prejudice has been caused to their defence on account of delay.

36. It has also been argued by Mr. Kanabar that the trial Court should have found a prima facie case for filing complaint and should have also satisfied itself that it would be expedient to file complaint. On going through the impugned order, it is found that the trial Court has assigned reasons for coming to a prima facie decision that there is a prima facie case for filing complaint. The trial Court has also observed that having regard to the facts and circumstances of the case, it is expedient to file complaint against the petitioner. Therefore, these two requirements, in my opinion, stand satisfied.

37. It has also been argued that as per the allegation in application Exh.313, defendant no.8 has alleged that there is an offence of criminal conspiracy but details have not been stated in the application. The application for filing complaint is not required to indicate detailed discussion and evidence. A simple averment that there is a criminal conspiracy would be enough. It would be required to be proved, at the stage of trial, that there was criminal conspiracy.

38. On the other hand, Mr. Y.S.Lakhani has also opposed the above order, mainly on the ground that these two petitioners were not at all beneficiaries to the proceedings in question. Whether or not the petitioners in Misc.Criminal Application no.2629/2003 were beneficiaries would be a subject matter of dispute at the trial. This is not a stage at which the said dispute can be settled by this Court.

39. Even otherwise, the said petitioners might not get benefit out of the document in question. However, there are allegations that the petitioners of these two petitions were guilty of criminal conspiracy. This can be dealt with and decided only on appreciation of materials which may be produced before the Court at the

Trial.

40. It has also been argued by Mr. Lakhani that when the written statement was filed in the year 1992-93, no objection of the present nature was raised. Defendant no.8 has made it clear that the forgery of documents came to his notice very late, and therefore, he filed the aforesaid application soon after it came to his knowledge. Again, the question of delay can be dealt with and decided at the relevant point of time.

41. It has also been argued by Mr. Lakhani that the dispute about power of attorney was not agitated earlier. Again, the concerned defendant has made it clear that he filed application Exh.313 only when he came to know about the offence of forgery. The date of his knowledge will again be a subject matter of dispute and it can be entertained on appreciation of evidence.

42. Mr. Lakhani has also argued that defendant no.8 remained silent for nearly two years. It is required to be considered that defendant no.8 has made it clear that he filed the application Exh.313 before the trial Court soon after he came to know about forgery of document. Again, delay in filing the application Exh.313 can be considered by the trial Court on appreciation of evidence, and material before it.

43. It has also been argued by Mr. Lakhani that application Exh.313 was filed only on 23rd February, 2000 when the matter was fixed for evidence. Defendant no.8 could file the application at any stage, and therefore, the application filed at the stage of recording of evidence could not be turned down, because it was filed at that stage.

44. It has to be observed here that on one hand, it has been argued that the application could not be filed during the pendency of a suit and hence it is premature one. On the other hand, it has been argued that there is a delay in filing the application Exh.313. Prima facie, it is neither early nor late and these two arguments can be appreciated at trail.

45. On referring to the disputes raised in paragraphs 3, 4, 5, 6 etc. at page 22, 23, 24, and 25, Mr. Lakhani argued that the present respondent cannot take such disputes. It is a fact that such disputes have been raised. Again, it would be open to the Court concerned to decide whether the respondent could take such contentions. This would require evidence and material

for being appreciated.

46. It has also been argued that the main pleadings resulting in consent decree etc., have not caused any damage to the present respondent. Simply because the respondent has sustained no damage, it would not be a ground for quashing the order in question. The matter relates to cognizable offence of forgery and any person can move a machinery of Court or police for taking action in respect of a cognizable offence.

47. Mr. Lakhani has also argued that this is not the rarest of rare cases, or an exceptional case which requires filing of complaint against the petitioners. When it has been alleged that so many documents have been forged and fabricated and when it is further alleged that concerned parties have submitted forged and fabricated documents and when it has been brought to the notice of the Court, it would become the duty of the Court to see that wrong doer is dealt with in accordance with law. Forgery of a document and production thereof in a Court may be treated to be a rarest of rare cases. It cannot be treated to be a formal and routine matter.

48. If on the other hand, it is noticed that application Exh.313 filed by defendant no.8 was a false one and no offence is made out, then, in that case, it would be open to the person suffering on account of complaint to take appropriate legal steps against this defendant also.

49. Mr. Lakhani has also argued that the trial Court could not presuppose anything in favour of defendant no.8, contesting respondent herein. It has to be accepted that the trial Court was required to deal with the averments and allegations in application Exh.313 as well as in affidavits in support thereof. The trial Court was also required to deal with the arguments advanced before it. Therefore, the decision has been arrived at on the strength of the appreciation of materials before it. On the whole, it can be gathered that the trial Court has considered application Exh.313 supported by at least two affidavits Exhs.318 and 319 filed by Manubhai and Shantaben. The trial Court has also considered that original plaintiff Jaisukhbhai has submitted written objections Exh.315. It also appears from the record that neither the plaintiff nor the contesting respondents who are petitioners in these two petitions, cared and dared to file affidavits in support of their contentions, and in order to contest application Exh.313 filed by defendant no.8 supported by two

aforesaid affidavits Exhs.318 and 319. The trial Court has given detailed reasons for coming to a decision of filing complaint against the persons concerned. The arguments advanced before the trial Court have been dealt with properly by the trial Court, and a well reasoned order has been passed, and in that event, it cannot be said that the order is ex facie illegal. While prima facie appreciating the materials on record and oral arguments, if a Court makes an observation or two, it can not be said that the trial Court had pre-supposed something.

50. Whether or not a document is a forged or fabricated one is again a question of fact which can be dealt with and decided on appreciation of evidence when the trial begins. This Court cannot enter into that area of disputed question of fact.

51. On referring to the provisions made in Section 195 and 340 of the said Code, the learned Advocates for the petitioners in both petitions have submitted that the trial Court ought to have entered into an enquiry before directing filing of complaint. Mr. Kanabar has also referred to the provisions made in sub clause (g) of Section 2 of the said Code wherein it has been mentioned that enquiry means every enquiry other than a trial, conducted under this Code by a Magistrate or a Court. In the present case, we find that since the application was submitted at Exh.313 by defendant no.8, and when the application was supported by the aforesaid two affidavits, the other side was called upon to file reply. The plaintiff submitted written objections but did not file affidavit. The remaining defendants did not submit objections nor did they submit affidavits before the trial Court, and therefore,the trial Court considered the above materials and decided the matter in favour of filing complaint.

52. (1) SANTOKH SING V. IZHAR HUSSAIN AND ANOTHER reported in AIR 1973 SC 2190, has been cited for showing that when the original Court declines to direct prosecution for offence under Section 211 which was confirmed in appeal by the Court, then the High Court in revision was not justified in its directing filing of complaint.

53. In the present case, the original Court has directed filing of complaint before the Court concerned. There is no question of granting such prosecution by this

Court. It has also been observed in it that the Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. It has also been observed that too frequent prosecutions for such offences tend to defeat cases of deliberate falsehood where conviction is highly likely , that the Court should direct prosecution.

54. It appears from the lengthy order of the trial Court that the trial Court did consider this aspect of the case before passing the order impugned in these two petitions.

54 (1) In K.KARUNAKARAN V. T.V.EACHARA WARRIER AND ANOTHER, reported in AIR 1978 Supreme Court 290, it has been observed that the party concerned may choose to place all its materials before the Court at that stage, but if it does not, it will not be estopped from doing so later in the trial in case prosecution is sanctioned by the Court. It has also been observed that at an enquiry irrespective of the result of the main case, the only question is whether a prima facie case is made out which if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

55. The trial Court has observed in so many words that when so many documents are alleged to be false, it would be expedient to file complaint against two sets of petitioners. The trial Court has also given reasons for holding that there is a prima facie case. Therefore, the requirement of this decision can be said to have been satisfied.

55. (1) In ARUN KUMAR AGARWAL V. MRS. RADHA ARUN, reported in 2001 CRI.L.J. 3561, the Honourable High Court of Karnatakka has observed that the most appropriate stage for trial Judge to take decision relating to alleged perjury would be at final stage of disposal of main matter on merits and that the trial Judge is not bound to first deal with and dispose of application made by party to proceedings u/S.340, Cr.P.C. at preliminary stage.

56. In the present case, we find that the trial Court issued notice and heard the parties, and thereafter, on appreciation of materials before it, came to a decision for filing complaint against the two sets of petitioners. Therefore, even if we take it that trial Court was not bound to take up the issue at the middle of the trial, it is also true that it was not illegal on the part of the Court to come to a decision impugned in these two petitions before the final disposal of the suit.

56. (1) Similar view was adopted in MAYAPUR SREE CHAITANYA MATH AND OTHERS V. SACHIDANANDA BRAHMACHARI AND OTHERS, reported in 1984 CRI.L.J. 1692.

56. (2) In DALBIR SINGH V. STATE OF HARYANA AND OTHERS, reported in AIR 2000 SC 1677, it has been observed in paragraph 8 that the Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the accused on probation for his good conduct regard being had to the circumstances of the case, that one of the circumstances which cannot be sidelined in forming the said opinion is" the nature of the offence."

57. Emphasis is on the term " expedient". In the present case also we find that the trial Court has given reasons for forming an opinion that it is expedient to file complaint against contesting petitioners in the two matters. Therefore, it cannot be said that the said issue was not considered by the trial Court while passing the order impugned in these two petitions.

57. (1) The decision in SACHIDA NAND SINGH AND ANOTHER V. STATE OF BIHAR AND ANOTHER, reported in 1998 CRI.L.J. 1565, is entirely on a different principle.

58. A question had arisen as to in which case prosecution is barred with respect to the offence of forgery. A question had arisen as to whether a bar under Section 195(i)(b)(ii) of the Code of Criminal Procedure, 1973, was applicable in case of forgery of document committed before the said document was produced in the Court. The Honourable Supreme Court found that the bar was not applicable if the document was forged before production, before the Court.

59. Here, the question is quite different. Whether

the Court was precluded from taking cognizance of the application Exh.313 filed by the respondents in these two matters. The above decision does not show that the Court is precluded from filing a complaint in respect of a document in respect of which forgery has been committed before its production before the Court.

59. (1) The decision in STATE OF PUNJAB V. RAJ SINGH AND ANOTHER, reported in (1998) 2 Supreme Court Cases 391, speaks about the provisions made in Secs.195 and 340 of the said Code. There, it has been observed that the power of police to investigate into a congnizable offence is not controlled by Section 195 of the said Code. It has also been observed that the Court is not competent to take cognizance of offence covered by Section 195 of the said Code. It has also been observed that nevertheless, the Court is not debarred from filing complaint on the basis of FIR and other materials collected during investigation provided it forms a requisite opinion and follows procedure laid down in Section 340.

59. (2) In N.NATARAJAN V. B.K.SUBBA RAO. reported in (2003) 2 Supreme Court Cases 76, the Honourable Supreme Court has observed that any citizen, even a stranger to a proceedings can file a complaint invoking powers and jurisdiction of a Court under Section 340 of the said Code. At the same time, it has also been held that private complainant indulging in vexatious litigation based on half-baked knowledge of law wasting time of Court should be restrained in the interest of administration of justice from filing similar applications.

59. (3) In CHHOTUBHAI BECHARBHAI PATEL V. NAGIN N. GANDHI & ANR. reported in 1979(2) G.L.R. 77, it has been laid down that before filing complaint under Section 195(i)(b) of the said Code, Court must form an opinion that an inquiry into the offence is essential in the interests of justice and that if no such opinion is

> formed first requirement under Section 340(1) cannot be said to have been observed.

60. There cannot be any dispute with respect to the aforesaid observation of this Court. In the present case, we find that this was not a simple application filed by defendant no.8 before the trial Court. The contentions of the application Exh.313 filed by defendant no.8 with regard to the power of attorney in question were supported by affidavits of two persons referred to hereinabove. The other side was called upon to explain the contentions. One of them submitted written objections (the plaintiff). The other one (defendants 1/1 to 1/4 did not choose to file objections. However, none filed affidavit in support of their rival case as appears from the order of the trial Court. It is not the case of the petitioners in these two petitions before this Court that affidavits in support of the case of the petitioners were filed but they were not considered by the trial Court. Therefore, when the allegations on oath were not controverted by the petitioners, the trial Court can be said to be justified in coming to the conclusion that a prima facie case exists in favour of the contesting respondent/original defendant no.8.

61. Anyway, the trial Court has formed an opinion under Section 340 of the said Code that there is a prima facie case for filing a complaint. The trial Court has considered the application Exh.313 submitted by defendant no.8 and supported by affidavits Exhs.318 and 319 filed by Manubhai and Shantaben. The trial Court has considered the objections of plaintiff-Jaisukhbhai at Exh.315. The trial Court has considered that defendants 1/1 to 1/4 have not submitted objections or affidavits. It seems that the plaintiff did not file affidavit in support of his contentions in his objections. In that view of the matter, after hearing the parties, and after giving them an opportunity of being heard, the above order has been recorded by the trial Court. The trial Court has given reasons for coming to a prima facie decision that offence has been prima facie made out. This Court will not go into the sufficiency of material before the trial Court. In that view of the matter, procedure as laid down in Section 340 has been followed by the trial Court before passing the order of filing complaint against the petitioners. Under these circumstances, this cannot be treated to be the rarest of rare cases for invoking inherent jurisdiction under Section 482 of the said Code. It is well settled that the powers and jurisdiction under Section 482 of the said

Code are required to be exercised sparingly and in exceptional cases. This is not found to be an exceptional case. Only an order for filing complaint has been passed. Thereafter, the complaint will be required to be prepared and filed before the concerned Court, and thereafter, the concerned Court will proceed in accordance with law. There also, there would be full trial and the petitioners herein will get ample opportunity to defend their case in accordance with law. Therefore, no prejudice has been caused to the interest of the petitioners by passing the order impugned in these to petitions. In the premises, I am of the opinion, that this is not a fit case for exercising powers under Section 482 of the said Code. There is no merit in the present petition, and therefore, it deserves to be dismissed. So far the impugned order relates to filing of complaint against the petitioners with respect to the forgery of power of attorney mark 233/1.

62. At the same time, so far other documents are concerned, they were not referred in the application Exh.313 of the contesting respondent. Reference thereof came to be made only during oral arguments of the learned advocate who represented the contesting respondent before the trial Court. Therefore, it is not possible to accept the arguments of the learned Senior Advocate for the contesting respondent, that the trial Court did make an inquiry, as contemplated in Sec.340 of the said Code, before passing impugned order with respect to the documents other than power of attorney mark 233/1.

63. In that view of the matter, the impugned order of the trial Court directing filing of complaint against the petitioners herein, with respect to other documents has to be set aside. It is risky to accept an oral request for filing complaints regarding forgery of certain documents. Moreover, the requirement of inquiry has been doneaway-with while accepting oral request of the contesting respondent for filing complaint against the petitioners, for forgery of documents other than power of attorney. Therefore, this part of the order can be said to have been passed by the learned Judge without following due process of law as laid down in Sec.340 of the said Code.

64. In my opinion, the provision for inquiry made in Sec.340 of the Code is an important safeguard for the just and reasonable protection of the persons against whom such orders are sought. Nature and extent of inquiry under Sec.340 of the said Code may vary from case to case. In my opinion, the inquiry as said in Sec.340

of the said Code could not be dispensed with in the present case. The impugned order in absence of the required inquiry under Sec.340 of the said Code, can, therefore, not be sustained in the eye of law. Therefore, the impugned order of the learned Judge directing filing of complaint against the petitioners for forgery of documents, other than power of attorney has to be set aside and the petition to that extent has to be allowed.

65. The net result of the foregoing discussion is that the present petitions are required to be partly allowed and the impugned order of the learned Judge directing COC/Registrar of his Court to file complaint against the petitioners is required to be set aside so long as it relates to the forgery of documents other than power of attorney. The said order is required to be confirmed partly so long as it relates to filing of complaint against the petitioners for the forgery of power of attorney except with a slight modification that the complaint will be required to be filed by the learned Judge and not by the COC/Registrar as said in Sec.340(i)(b) of the said Code.

66. For the reasons recorded hereinabove, these petitions are partly allowed as follows:-

66.1 (a) The impugned order of the learned Judge directing his COC/Registrar to file complaint before the Chief Judicial Magistrate for alleged forgery of documents, referred in his order impugned in these petitions, is ordered to be set aside as regards the documents, other than power of attorney mark 233/1. These petitions are thus partly allowed accordingly to that extent.

66.2 (b) The impugned order of the learned Judge directing his COC/Registrar to file complaint before the Chief Judicial Magistrate to file complaint for forgery of power of attorney mark 233/1 is modified and it is directed that the complaint will be filed by the Court and not by COC/Registrar. Remaining part of the impugned order of the learned Judge for filing complaint against the petitioners before the Chief Judicial Magistrate for the alleged forgery of power of attorney mark 233/1 stands

confirmed and the petitions of the petitioners to that extent are dismissed.

Rule is partly made absolute to the above extent.

(D.P.Buch,J.)

stanley-dpb.

FURTHER ORDER

M/s. P J Kanabar and Y S Lakhani, learned Advocates submit, after pronouncement of the above judgment that the petitioiners would like to carry the matter to the Hon'ble Supreme Court and, therefore, the interim relief granted earlier may be extended for a period of eight weeks. Looking to the nature of the proceedings, the interim relief granted earlier will stand extended for a further period of four weeks in both these matters.

[D P Buch, J.]